

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.)
)
Plaintiffs,)
)
v.)
)
DIRK KEMPTHORNE, Secretary of the)
Interior, et al.)
)
Defendants.)
_____)

Case No. 1:96CV01285
(Judge Robertson)

INTERIOR DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
ENLARGEMENT OF TIME TO RESPOND TO INTERIOR DEFENDANTS'
MOTION FOR AN ORDER AUTHORIZING THE CONNECTION TO THE
INTERNET OF CERTAIN INTERIOR INFORMATION TECHNOLOGY
SYSTEMS AND VACATING THE DECEMBER 17, 2001 CONSENT ORDER
REGARDING INFORMATION TECHNOLOGY SECURITY

On February 11, 2008, Interior Defendants filed a Motion for an Order (1) Authorizing the Reconnection to the Internet of Information Technology Systems of the Bureau of Indian Affairs, the Office of Hearing and Appeals, and the Office the Special Trustee, (2) Confirming that the Office of Historical Trust Accounting May Connect Its Information Technology System to the Internet, and (3) Vacating the December 17, 2001 Consent Order Regarding Information Technology Security (February 11 motion) [Dkt. 3507]. Plaintiffs responded on February 15, 2008, with a motion for an enlargement of time to oppose that motion, seeking from the Court an open-ended enlargement until 11 days after the Court rules on Interior Defendants' prior November 9, 2007, motion for an order reconnecting the Office of the Solicitor to the Internet [Dkt. 3509]. Plaintiffs' motion fails to demonstrate that Plaintiffs need additional time to respond to the February 11 motion. Accordingly, the motion should be denied.

Rather than showing a need for more time to respond to Interior Defendants' February 11

motion, Plaintiffs' motion actually demonstrates that they are prepared to oppose it. Indeed, their motion is filled with numerous substantive attacks on the February 11 motion, arguments that have no place in a motion for enlargement.¹ Rather than needing more time to respond to the February 11 motion, Plaintiffs acknowledge that what they really seek is an opportunity to respond to the Court's eventual decision on Interior Defendants' motion for an order reconnecting the Office of the Solicitor's IT system. Pls. Mot. at 2. That, however, is not a proper basis for an enlargement. Because the court has yet to rule on the motion regarding the Office of the Solicitor and the February 11 motion is related to it, judicial economy favors not the delay of Plaintiffs' opposition brief, but the submission of their response as early as possible, to give the court the opportunity to address both motions together, if it wants. Should the Court issues its decision regarding the Office of the Solicitor's IT system before ruling on the February 11 motion, both parties should be permitted to incorporate that decision into their arguments regarding the three disconnected Interior offices or bureau, as well as the Office of Historical Trust Accounting. But no basis exists for Plaintiffs to receive an open-ended enlargement of time.

Finally, Plaintiffs' contention that a decision on the merits of the February 11 motion would likely delay the resolution of this case "if such decision results in the commencement of collateral proceedings on IT security" is irrelevant. Pls. Mot. at 3. It has no bearing on whether

¹ Interior Defendants dispute the substantive arguments contained in Plaintiffs' motion for enlargement, and will respond to those arguments at the appropriate time in a reply to Plaintiffs' opposition to the February 11 motion. See Cobell v. Kempthorne, 455 F.3d 301, 315 (D.C. Cir. 2006) ("The inherently imperfect nature of IT security means that if we granted injunctive relief here, based only on Interior's security vulnerabilities and not on a showing of some imminent threat or specific reason to be concerned that IITD is a target, we would essentially be justifying perpetual judicial oversight of Interior's computer systems.").

Plaintiffs should be afforded an open-ended enlargement of time to respond to the straightforward February 11 motion.

Plaintiffs having failed to show good cause for the enlargement requested, as required by Fed. R. Civ. P. 6(b), Interior Defendants respectfully request that the motion for an enlargement of time be denied.

Dated: February 20, 2008

Respectfully submitted,

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J. CHRISTOPHER KOHN
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CERTIFICATE OF SERVICE

I hereby certify that, on February 20, 2008 the foregoing *Interior Defendants' Opposition to Plaintiffs' Motion for Enlargement of Time to Respond to Interior Defendants' Motion for an Order Authorizing the Connection to the Internet of Certain Interior Information Technology Systems and Vacating the December 17, 2001 Consent Order Regarding Information Technology Security* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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Kevin P. Kingston

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ELOUISE PEPION COBELL, <u>et al.</u> ,)	
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Plaintiffs,)	
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v.)	Case No. 1:96cv01285JR
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DIRK KEMPTHORNE,)	
Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	

ORDER

This matter comes before the Court on *Plaintiffs’ Motion for Enlargement to Respond to Interior Defendants’ Motion for an Order (1) Authorizing the Reconnection to the Internet of Information Technology Systems of the Bureau of Indian Affairs, the Office of Hearings and Appeals, and the Office of the Special Trustee (2) Confirming That the Office of Historic Trust Accounting May Connect its Information Technology System to the Internet, and (3) Vacating the December 17, 2001 Consent Order Regarding Information Technology Security.* (Dkt. No. 3509). Upon consideration of the Plaintiffs’ Motion, Defendants’ Opposition, any Reply thereto, and the entire record of this case, it is hereby;

ORDERED that the Motion for Enlargement is DENIED.

SO ORDERED.

Hon. James Robertson
UNITED STATES DISTRICT JUDGE

Date: _____